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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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11 THANH QUANG,

12 Plaintiff,

13 v.

14 S. ALAMOSA, et al.,

15 Defendants.
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No. 2:22-CV-01704-DAD-DMC-P

ORDER

17 Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to
18 42 U.S.C. § 1983. Pending before the Court is Plaintiff's first amended complaint, ECF No. 18.

19 The Court is required to screen complaints brought by prisoners seeking relief
20 against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C.
21 § 1915A(a). This provision also applies if the plaintiff was incarcerated at the time the action was
22 initiated even if the litigant was subsequently released from custody. See Olivas v. Nevada ex rel.
23 Dep't of Corr., 856 F.3d 1281, 1282 (9th Cir. 2017). The Court must dismiss a complaint or
24 portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can
25 be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See
26 28 U.S.C. § 1915A(b)(1), (2). Moreover, the Federal Rules of Civil Procedure require that
27 complaints contain a ". . . short and plain statement of the claim showing that the pleader is
28 entitled to relief." Fed. R. Civ. P. 8(a)(2). This means that claims must be stated simply,

1 concisely, and directly. See McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to
2 Fed. R. Civ. P. 8(e)(1)). These rules are satisfied if the complaint gives the defendant fair notice
3 of the plaintiff's claim and the grounds upon which it rests. See Kimes v. Stone, 84 F.3d 1121,
4 1129 (9th Cir. 1996). Because Plaintiff must allege with at least some degree of particularity
5 overt acts by specific defendants which support the claims, vague and conclusory allegations fail
6 to satisfy this standard. Additionally, it is impossible for the Court to conduct the screening
7 required by law when the allegations are vague and conclusory.

8 9 I. PLAINTIFF'S ALLEGATIONS

10 Plaintiff names the following as defendants: (1) "C.M.F. Prison of California" and
11 (2) S. Alameda. See ECF No. 18, pgs. 1-2. Plaintiff claims that he asked for help with his foot
12 problems in 2020 "but was denied." Id. at 3. Plaintiff states that, as of 2023, he was "told to wait
13 & still I did not get any help." Id. According to Plaintiff, he requires a "working boot" to be able
14 to attend his job. See id. at 4. Plaintiff states that "they" told him he's on the list but still hasn't
15 received the required footwear. See id. Plaintiff states that his foot is hurting all the time. See id.

16 17 II. DISCUSSION

18 As with Plaintiff's original complaint, the amended complaint suffers from the
19 same defects. First, state prisons are immune from suit under the Eleventh Amendment. Second,
20 though Plaintiff names S. Alameda as a defendant, the amended complaint contains no mention of
21 this individual and thus fails to establish a causal link between the named defendant and a
22 constitutional violation.

23 A. Eleventh Amendment Immunity

24 The Eleventh Amendment prohibits federal courts from hearing suits brought
25 against a state both by its own citizens, as well as by citizens of other states. See Brooks v.
26 Sulphur Springs Valley Elec. Coop., 951 F.2d 1050, 1053 (9th Cir. 1991). This prohibition
27 extends to suits against states themselves, and to suits against state agencies. See Lucas v. Dep't
28 of Corr., 66 F.3d 245, 248 (9th Cir. 1995) (per curiam); Taylor v. List, 880 F.2d 1040, 1045 (9th

1 Cir. 1989). A state's agency responsible for incarceration and correction of prisoners is a state
2 agency for purposes of the Eleventh Amendment. See Alabama v. Pugh, 438 U.S. 781, 782
3 (1978) (per curiam); Hale v. Arizona, 993 F.2d 1387, 1398-99 (9th Cir. 1993) (en banc).

4 To the extent "C.M.F. Prison of California" refers to the California Medical
5 Facility, which is a prison within the California Department of Corrections and Rehabilitation
6 system, Plaintiff cannot proceed as against this entity, which is immune from suit. This defect
7 cannot be cured.

8 **B. Causal Link**

9 To state a claim under 42 U.S.C. § 1983, the plaintiff must allege an actual
10 connection or link between the actions of the named defendants and the alleged deprivations. See
11 Monell v. Dep't of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). "A
12 person 'subjects' another to the deprivation of a constitutional right, within the meaning of
13 § 1983, if he does an affirmative act, participates in another's affirmative acts, or omits to perform
14 an act which he is legally required to do that causes the deprivation of which complaint is made."
15 Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Vague and conclusory allegations
16 concerning the involvement of official personnel in civil rights violations are not sufficient. See
17 Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982). Rather, the plaintiff must set forth
18 specific facts as to each individual defendant's causal role in the alleged constitutional
19 deprivation. See Leer v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988).

20 The only individual named in the amended complaint is S. Alameda. The
21 amended complaint, however, is devoid of any allegations specific to this individual. Plaintiff's
22 references to "they" is insufficient to put Defendant Alameda on notice. In the interest of justice,
23 the Court will permit Plaintiff one additional opportunity to amend to cure this defect.

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III. CONCLUSION

Because it is possible that some of the deficiencies identified in this order may be cured by amending the complaint, Plaintiff is entitled to leave to amend prior to dismissal of the entire action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc). Plaintiff is informed that, as a general rule, an amended complaint supersedes the original complaint. See Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). Thus, following dismissal with leave to amend, all claims alleged in the original complaint which are not alleged in the amended complaint are waived. See King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987). Therefore, if Plaintiff amends the complaint, the Court cannot refer to the prior pleading in order to make Plaintiff's amended complaint complete. See Local Rule 220. An amended complaint must be complete in itself without reference to any prior pleading. See id.

If Plaintiff chooses to amend the complaint, Plaintiff must demonstrate how the conditions complained of have resulted in a deprivation of Plaintiff's constitutional rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). The complaint must allege in specific terms how each named defendant is involved, and must set forth some affirmative link or connection between each defendant's actions and the claimed deprivation. See May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

Because some of the defects identified in this order cannot be cured by amendment, Plaintiff is not entitled to leave to amend as to such claims. Plaintiff, therefore, now has the following choices: (1) Plaintiff may file an amended complaint which does not allege the claims identified herein as incurable, in which case such claims will be deemed abandoned and the Court will address the remaining claims; or (2) Plaintiff may file an amended complaint which continues to allege claims identified as incurable, in which case the Court will issue findings and recommendations that such claims be dismissed from this action, as well as such other orders and/or findings and recommendations as may be necessary to address the remaining claims.

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1 Finally, Plaintiff is warned that failure to file an amended complaint within the
2 time provided in this order may be grounds for dismissal of this action. See Ferdik, 963 F.2d at
3 1260-61; see also Local Rule 110. Plaintiff is also warned that a complaint which fails to comply
4 with Rule 8 may, in the Court's discretion, be dismissed with prejudice pursuant to Rule 41(b).
5 See Nevijel v. North Coast Life Ins. Co., 651 F.2d 671, 673 (9th Cir. 1981).

6 Accordingly, IT IS HEREBY ORDERED that:

- 7 1. Plaintiff's first amended complaint is dismissed with leave to amend; and
- 8 2. Plaintiff shall file a second amended complaint within 30 days of the date
9 of service of this order.

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11 Dated: January 25, 2024



12 DENNIS M. COTA
13 UNITED STATES MAGISTRATE JUDGE
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